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Chairman William Kennard
Federal Communications Commission
1919 M Street N. W.
Washington DC 20554

CC DOCKET NO. 98-141

SUPRA'S DEMAND FROM THE SBC/AMERITECH AND BELL ATLANTIC/GTE MERGERS

Dear Chairman Kennard:

Supra Telecommunications & Information Systems, Inc. ("Supra") is a minority-owned Alternative Local Exchange Carrier (ALEC) duly certificated to perform local and long distance service as result of the Telecommunications Act of 1996.

In order for Supra to compete in the local loop and bring the benefits of competition to consumers, Supra demands that the Federal Communications Commission (FCC) require SBC/Ameritech and Bell Atlantic/GTE to sell 20% of there combined assets to our corporation as a precondition for the approval of there proposed merger. Supra will pay for the assets to be acquired from these corporations.

Please recall the Federal Communications Commission's Memorandum Opinion and Order number 97-286 dated August 14, 1997 that approved the Bell Atlantic and Nynex merger. The order reads:

> In accordance with the terms of Sections 214(a) and 310(d), before we can approve the transfers of licenses and other authorizations underlying the merger, we must be persuaded that the transaction is in the public interest, convenience and necessity. Applicants bear the burden of demonstrating that the proposed transaction is in the public interest. The public interest standard is a broad, flexible standard, encompassing the "broad aims of the Communications Act." These "broad aims" include, among other things, the implementation of Congress' "pro-competitive, de-regulatory national policy framework" for telecommunications, "preserving and advancing" universal service, and "accelerat[ing] rapidly private sector deployment of advanced telecommunications and information technologies and services."

Our examination of a proposed merger under the public interest standard includes consideration of the competition policies underlying the Sherman and Clayton Acts -- the Commission is separately authorized to enforce Section 7 of the Clayton Act in the case of mergers of common carriers -- but the public interest standard necessarily subsumes and extends beyond the traditional parameters of review under the antitrust laws.

In order to find that a merger is in the public interest, we must, for example, be convinced that it will enhance competition. A merger will be pro-competitive if the harms to competition -- *i.e.*, enhancing market power, slowing the decline of market power, or impairing this Commission's ability to properly establish and enforce those rules necessary to establish and maintain the competition that will be a prerequisite to deregulation -- are outweighed by benefits that enhance competition. If applicants cannot carry this burden, the applications must be denied.

In demonstrating that the merger will enhance competition, applicants carry the burden of showing that the proposed merger would not eliminate potentially significant sources of the competition that the Communications Act, particularly as amended by the Telecommunications Act of 1996, sought to create.

Accordingly, and consistent with the 1996 Act's focus on competition and deregulation, it is incumbent upon applicants to prove that, on balance, the merger will enhance and promote, rather than eliminate or retard, competition. The competition and deregulation Congress sought to foster extends not just to traditional local telephone service, but to related interstate access services, to Commercial Mobile Radio Services ("CMRS"), and to interstate long distance services.

We must be especially concerned about mergers between incumbent monopoly providers and possible rivals during this initial period of implementation of the 1996 Act.

In order to properly evaluate proposed mergers in this evolving marketplace, and to take account of the uncertainties surrounding the pace and extent of the development of competition, we will evaluate the likely effects of the proposed merger on competition both during implementation of the 1996 Act and as that implementation alters market structure in the future.

With respect to the proposed merger of Bell Atlantic and NYNEX, we conclude that the proposed merger will eliminate Bell Atlantic as a likely significant independent competitor in the market to provide local exchange and exchange access services, and bundled local exchange, exchange access and long distance services, to residential and smaller business customers, particularly in LATA 132 and the New York metropolitan area (including northern New Jersey), but not limited to that area.

We conclude that Bell Atlantic did plan to enter LATA 132 and other NYNEX territories, and that Bell Atlantic should be considered a competitor to NYNEX, but for the proposed merger. We base this conclusion on documents showing that, among other things, Bell Atlantic ceased its planning to enter NYNEX territories during the pendency of merger discussions, and on our assessment of Bell Atlantic's incentives and capabilities to compete in the relevant markets.

Cognizant of the uncertainty as to the pace and extent of the lowering of barriers to entry, and taking the merger on its terms alone and without any other considerations, **we believe that Applicants have failed to carry their burden of showing, under the public interest standard, that entry would be sufficiently easy to mitigate the potential harms to competition from merging the leading and no less than fifth most significant participant in the market for providing telecommunications services to residential and small business customers.** Applicants also have not carried their burden of demonstrating, under the public interest standard, that efficiencies generated by the merger will mitigate entirely the potential competitive harms.

On July 19, 1997, however, Bell Atlantic and NYNEX proffered a series of commitments they would be willing to undertake as conditions of the approval of their merger. While this remains a close case, **these conditions allow us, in this case, to find that the transaction, as supplemented by the conditions, will be in the public interest.**

We believe these conditions create pro-competitive benefits that at least in part mitigate the potentially negative impacts of the proposed merger on competition in LATA 132 and the New York metropolitan area, and that, when extended throughout the Bell Atlantic and NYNEX regions, outweigh any other adverse effects in those areas.

> Granting this application subject to conditions does not mean applicants will always be able to propose pro-competitive public interest commitments that will offset potential harm to competition. Nor would these particular conditions necessarily justify approval of another proposed merger for which applicants had not otherwise carried their burden of proof. Different cases will present different facts and competitive circumstances. As competitive concerns increase, it becomes significantly more difficult for applicants to carry their burden to show that the proposed transaction is in the public interest. A merger that in the relevant markets, eliminated a competitor with even greater assets and capabilities than Bell Atlantic would present even greater competitive concerns. For some potential mergers, the harm to competition may be so significant that it cannot be offset sufficiently by pro-competitive commitments or efficiencies. In such cases, we would not anticipate the applicants could carry their burden to show the transaction, even with commitments, is pro-competitive and therefore in the public interest.
>
> We also note that we are concerned about the impact of the declining number of large incumbent LECs, on this Commission's ability to carry out properly its responsibilities to ensure just and reasonable rates, to constrain market power in the absence of competition, and to ensure the fair development of competition that can lead to deregulation.
>
> Because we approve this merger with conditions, thereby reducing the number of independently controlled large incumbent LECs, future applicants bear an additional burden in establishing that a proposed merger will, on balance, be pro-competitive and therefore serve the public interest, convenience and necessity.

Chairman Henry J. Hyde of the House Committee on the Judiciary stated during the Oversight Hearing on "The Effects of Consolidation on the State Of Competition in the Telecommunications Industry" held on June 24, 1998:

> The FCC also plays an important, and indeed broader, role. It reviews mergers between telephone companies to determine whether the merger will serve "the public interest, necessity, and convenience". In conducting its public interest review, the FCC is not limited to a competitive analysis, but may also consider other regulatory goals in deciding whether to approve or disapprove the merger.

At that occasion, Rep. John Conyers stated that:

> The Telecommunications Act of 1996 is supposed to usher in an era of vigorous competition in the local telephone and cable industries. And two years later, the local bell monopolies still control 98% of the local loop, the incumbent cable operators maintain relative monopolies in most of their markets and consumers are experiencing price increases for both cable and local telephone service.
>
> We have got some very big problems. I am asking myself if we need to really go into antitrust legislation. I come here with a renewed concern that the regulations and regulators are not vigorous enough. That the industry promises are always seductive. The FCC needs to be doing a lot more in terms of bringing down these current market prices. And I think that the Congress too needs to act.
>
> **The Telecommunications Act itself after two years needs to rewritten.**

At that same hearing, Commissioner Susan Ness of the FCC stated that:

> In carrying out its statutory obligation, the FCC examines how the proposed transaction will affect the development of competition in all communications markets. The public interest also requires the FCC to balance the potential pro-competitive effects of a transaction with its anticompetitive effects. In evaluating whether a proposed merger is in the public interest, the Commission considers whether the transaction will, on balance, enhance competition.
>
> **The ultimate goal of the competitive analysis of a merger is to determine how the merger will affect the development of competition as the transition to a deregulated environment envisioned by the Telecommunications Act evolves. Thus we must not look at the current significance of merging parties today, but rather their expected significance as the Act is implemented. This is especially important in telecommunications markets.**

The above quotes are examples of statements made by policy makers to support our proposal.

As you are aware, Supra is having a very difficult time competing with RBOCs. These companies have constituted themselves into clogs in our wheel of progress. We have therefore come to the conclusion that for the benefit of the Telecommunications Act to be felt by the consumers as a whole, Supra must be allowed to participate in

those mergers by acquiring assets from these monopolies. The proposed SBC/Ameritech merger will give us presence in 12 states while the Bell Atlantic/GTE merger will provide us access to another 26 states.

Our proposal includes but is not limited to the sale of the following assets to Supra by the merging companies:

- At least 20% of the assets of the merged corporations;
- Duplications in the wireless networks of these corporations;
- Central Offices in every state;
- Fiber routes; and
- Human resources.

The benefits of our proposal are as follows:

- Offering of new, exciting telecommunications services to consumers;
- Reduction in rates currently being paid by subscribers for telecommunication services;
- Investment in new data networks for the provisions of faster Internet assess;
- Compete with the RBOCs;
- Creation of a new entity that understands competition and will work with regulators and ALECs to foster competition in the local loop;
- Realization of the dreams of the TA.

We have formally expressed our desire to purchase some of the assets of SBC/Ameritech and Bell Atlantic/GTE in our letters to both Mr. Ed Whitacre and Mr. Raymond Smith of SBC and Bell Atlantic respectively. In its response, SBC has stated that it is not opposed to the idea of disposing some of its assets to Supra, but would have preferred an exchange of assets. Supra, however does not have assets to exchange with SBC. We therefore believe that it is only through the efforts of the commission that we can succeed with this process.

We truly want to compete in the local loop if given a chance, unfortunately the present structure as established, makes it very difficult as is evidenced by the pull-outs of AT&T from the local market due in large part to the anti-competitive behavior of the RBOCs.

We look forward to your consideration and favorable reply to this proposal. I can be reached directly at (305) 476 4220.

Respectfully yours,

Olukayode A. Ramos
Chairman and CEO

Copy:

Commissioner Susan Ness

Commissioner Harold Furchtgott-Roth

Commissioner Michael Powell

Commissioner Gloria Tristani